



CRL.OP(MD) No.6343 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

Crl. OP(MD) No.6343 of 2025

Navaneethakrishnan

... Petitioner

Vs.

The State of Tamil Nadu,
Represented by the Inspector of Police,
Thenkarai Police Station,
Theni.
Crime No.115 of 2022.

... Respondent

PRAYER: Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, to call for the records made in Crl.M.P.No.135 of 2024 in S.C.No.145 of 2022 on the file of the Sessions Judge, Fast Track Mahila Court, Theni District dated 23.09.2024 and set aside the same.

For Petitioner : Mr.A. Joseph Jerry

For Respondent : Mr.M.Sakthi Kumar

Government Advocate



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ORDER

This petition has been filed by the petitioner to set aside the order passed in Crl.M.P.No.135 of 2024 in S.C.No.145 of 2022 on the file of the Sessions Judge, Fast Track Mahila Court, Theni District dated 23.09.2024.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the accused and he is facing trial in S.C.No.145 of 2022 on the file of the learned Sessions Judge, Fast Track Mahila Court, Theni. Before the Trial Court, P.W.1 and P.W.2 were examined on 06.02.2025. At that time, the accused was in judicial custody in another case from 17.10.2023 onwards. In the meantime, the counsel for the accused unable to get instructions from the accused. Therefore, he was unable to cross examine the witnesses. Thereafter, the petitioner filed a petition to recall the P.W.1 and P.W.2 and the same was dismissed by the Trial Court by stating the reason as allowing the petition to recall the witness is the discretion of the Court and the cross examination of witness can be deferred only by the discretion of the Judge, and therefore, the reasons stated by the petitioner is not acceptable and dismissed the

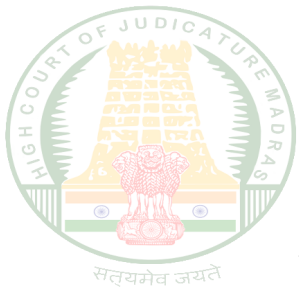


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petition. The said reason stated by the Trial Court are not in accordance with law. Moreover, already the petitioner filed a petition to recall the P.W.3 before the same Court in Crl.M.P.No.499 of 2024 and the same was dismissed. Against which, the petitioner has filed this petition before this Court in Crl.O.P.(MD) No.5684 of 2025 and the same was allowed on 27.03.2025. Therefore, the order passed by the Trial Court is liable to be set aside.

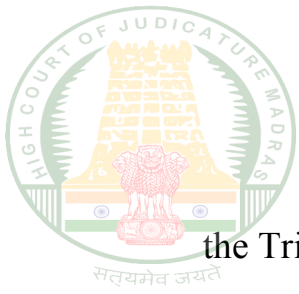
3. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the petitioner is the accused in the case and already before the Trial Court witnesses P.W.1 and P.W.2 were examined on 06.02.2024. On that date, the learned counsel appearing for the petitioner had not cross examined the witnesses. Thereafter, the petitioner filed a petition to recall the witnesses and the same was dismissed by the Trial Court by affording adequate reasons. Therefore, the petitioner wantonly failed to cross examine the witnesses and the petition is liable to be dismissed.

4. Heard both sides and perused the records.



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5. The petitioner's contention is that he is the accused in this case and while he was in judicial custody in another case, the P.W.1 to 3 were examined in chief and thereby, he was unable to cross examine the witnesses. According to the respondent, on the date of chief examination of witnesses, the counsel for the petitioner was present, but failed to cross examine. Therefore, already ample chances were given, but those opportunities were not availed by the petitioner. This Court also perused the order passed by the Trial Court and the Trial Court passed the order by observing that P.W.1 to 3 are coolie workers and on the date of examination of chief, the petitioner's counsel was also present and it is the discretion of the Court to allow the petition. There is no dispute that on the date of examination of witnesses the petitioner was under judicial custody. Though the counsel for the petitioner was present, but not cross examined the witnesses and the petition is the first petition filed by the petitioner and the witnesses were not cross examined. Already this Court also allowed the petition filed by the petitioner for cross-examine the witness P.W.3 through an order in Crl.O.P (MD) No.5684 of 2025 dated 27.03.2025. Therefore, in order to give a fair chance to the petitioner and to meet the ends of justice and considering the gravity of offences, this Court is inclined to allow this petition by setting aside the order passed by



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the Trial Court.

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6. Accordingly, this criminal original petition is allowed and the order passed in Crl.M.P.No.135 of 2024 dated 23.09.2024 on the file of the Fast Track Mahila Court, Theni District is set aside. The petitioner is directed to deposit a sum of Rs.1,000/- each to the witnesses towards cost before the Trial Court within a period of 15 days from the date of receipt of a copy of this order. After depositing the said amount, the Trial Court is directed to issue summon to the P.W.1 and P.W.2 by fixing a particular date for cross examination and on that day, the petitioner has to cross examine the witnesses.

07.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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P.DHANABAL, J.

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To

1. The Fast Track Mahila Court, Theni District
2. The Inspector of Police,
Thenkarai Police Station,
Theni.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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